

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BACKPAGE.COM, LLC et al.,

Plaintiffs,

v.

ROB MCKENNA, Attorney General for  
Washington State et al.,

Defendants.

CASE NO. C12-954 RSM

ORDER GRANTING DEFENDANT  
HAUGE'S MOTIONS TO DISMISS

**I. INTRODUCTION**

This matter comes before the Court upon Defendant Russell D. Hauge's Motions to Dismiss (Dkt. ## 24, 37). For the reasons set forth below, Defendant's motions are GRANTED.

**II. BACKGROUND**

Plaintiffs challenged the constitutionality of Senate Bill 6251 prior to its scheduled enforcement date (Dkt. #1). The Complaint named as Defendants Washington State Attorney General Rob McKenna and 39 of the state's prosecuting attorneys. On July 27, 2012, the Court granted the Motion for Preliminary Injunction to enjoin enforcement of SB 6251 (Dkt. #69).

Senate Bill 6251 makes it a felony to knowingly publish, disseminate, or display, or to “directly or indirectly” cause content to be published, disseminated or displayed if it contains a “depiction of a minor” and any “explicit or implicit offer” of sex for “something of value.” Under the proposed law it is not a defense that the defendant did not know the age of the person depicted and the defendant may not rely on representation by, or the apparent age of, the person depicted. Though scheduled to go into effect on June 7, 2012, the Court ordered a temporary restraining order on June 5, 2012, which remained in effect until the Court issued its order granting a preliminary injunction. SB 6251 has never been enforced against Plaintiffs.

Plaintiffs First Amended Complaint sets forth three causes of action under 42 U.S.C. § 1983: (1) Violation of Communications Decency Act; (2) Violation of the First and Fourteenth Amendments of the Constitution; and (3) Violation of the Commerce Clause of the Constitution (Dkt. #28, ¶ 1). Defendant Kitsap County Prosecuting Attorney Russell D. Hauge moved for dismissal of the 42 U.S.C. § 1983 claims against him pursuant to Fed. R. Civ. P. 12(b)(6). Defendant Hauge challenges only the § 1983 claims against him; he does not dispute Plaintiffs’ right to challenge, pre-enforcement, the constitutionality of SB 6251, nor does he seek dismissal of Plaintiffs’ declaratory judgment action.

### III. DISCUSSION

#### A. Standard of Review

In considering a Rule 12(b)(6) motion to dismiss, the Court must determine whether the plaintiff has alleged sufficient facts to state a claim for relief which is “plausible on its face.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1951 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible if the plaintiff has pled “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct

alleged.” *Id.* (citing *Twombly*, 550 U.S. 556). In making this assessment, the Court accepts all facts alleged in the complaint as true, and makes all inferences in the light most favorable to the non-moving party. *Baker v. Riverside County Office of Educ.*, 584 F.3d 821, 824 (9th Cir. 2009) (internal citations omitted). The Court is not, however, bound to accept the plaintiff’s legal conclusions. *Iqbal*, 129 S. Ct. at 1949-50. While detailed factual allegations are not necessary, the plaintiff must provide more than “labels and conclusions” or a “formulaic recitation of the elements of a cause of action.” *Twombly*, 550 U.S. at 555.

#### **B. 42 U.S.C. § 1983**

“Section 1983 provides a tort remedy against ‘[e]very person who, under color of [state law] subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws.’” *Lacey v. Maricopa Cnty.*, 2012 WL 3711591 \*6 (9th Cir. August 29, 2012) (quoting 42 U.S.C. §1983). Therefore, to state a viable claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution or laws of the United States, and show that the violation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

The Court granted a temporary restraining order, followed by a preliminary injunction to enjoin any application of SB 6251 prior to the date on which the bill was to be enforced. As the bill has never been enforced, Plaintiffs cannot, as of yet, have suffered any violation of a constitutionally protected right. Plaintiffs may endure a violation of some protected right if SB 6251 is enforced against them at some future date. But Plaintiffs fail to direct the Court to any precedent that stands for the proposition that a § 1983 claim is viable in the absence of an actual violation of a protected right. Plaintiffs allege no facts from which the Court can conclude that Defendant Hauge prosecuted Plaintiffs under the SB 6251 or that he caused a deprivation of a

1 protected right while acting under color of state law. Accordingly, Plaintiffs' § 1983 claims  
2 against Defendant Hauge must be dismissed.

3 **IV. CONCLUSION**

4 Having reviewed the relevant motions, responses, and replies thereto, and the remainder  
5 of the record, the Court hereby finds and ORDERS:

6 (1) Defendant's Motions to Dismiss (Dkt. ## 24, 37) are GRANTED, as set out above.

7 (2) The Clerk is directed to forward a copy of this Order to plaintiffs and to all counsel  
8 of record.

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10 Dated September 18, 2012.

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14 RICARDO S. MARTINEZ  
15 UNITED STATES DISTRICT JUDGE  
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